**Board of Alien Labor Certification**
**United States Department of Labor**
**Washington, D.C.**

DATE: July 13, 1998
CASE NO: 97-INA-521

***In the Matter of:***

NELVILLE GUEST HOMES
*Employer*

***On Behalf of:***

LYDIA CRISOSTOMO
*Alien*

Appearance: Jack Golan, Esq.
Los Angeles, CA
For the Employer and Alien

Before: Holmes, Vittone, and Wood
Administrative Law Judges

JOHN C. HOLMES
Administrative Law Judge

## DECISION AND ORDER

The above action arises upon the employer's request for review pursuant to 20 C.F.R. §656.26 (1991) of the denial by the United States Department of Labor Certifying Officer ("CO") of alien labor certification. This application was submitted by employer on behalf of the above-named alien pursuant to §212 (a) (5) of the Immigration and Nationality Act of 1990, 8 U.S.C. §1182 (a) (5) ("Act"). The certification of aliens for permanent employment is governed by §212 (a) (5) (A) of the Act, 8 U.S.C. §1182 (a) (5) (A), and Title 20, Part 656 of the Code of Federal Regulations ("CFR"). Unless otherwise noted, all regulations cited in this decision are in Title 20.

Under §212 (a) (5) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and Attorney General that, at the time of application for a visa and admission into the United States and at the

place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available; and, (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

We base our decision on the record upon which the CO denied certification and employer's request for review, as contained in the Appeal File,[1] and any written argument of the parties. §656.27 (c).

## Statement of the Case

On March 29, 1995, Nelville Guest Homes ("employer") filed a labor certification application to enable Lydia Crisostomo ("alien") to fill the position of cook at an hourly wage of $8.50 (AF 84). The job duties are described as follows:

> Prepare and cook nutritious meals for employees and residents of residential care facility. Plan menus taking into account special dietary needs and requirements of residents including low sodium, low cholesterol, non-spicy and spices to create foods, including specialties, according to prescribed methods. Prepare vegetables, sauces, soups, meats, fish and poultry and cook adhering to special dietary needs of residents. Estimate food consumption and requisition and purchase supplies and foodstuffs.
>
> The job requirements are two years of experience in the job offered.

On January 14, 1997, the CO issued a Notice of Findings proposing to deny certification. The CO cited a violation of §656.21 (b) (6) which provides that U.S. workers applying for a job opportunity offered to an alien may be rejected solely for lawful, job-related reasons. The CO determined that the employer failed to provide lawful, job-related reasons for rejecting Applicants Carlos Lara, Shakim Blie, and Jose Zavala. The CO observed that these applicants possessed the required experience and determined the employer's recruiting report was unpersuasive. The CO also determined that the employer failed to prove the position was full-time employment under §656.3. The CO therefore requested documentation including the employer's most recent quarterly payroll tax return for California, and a listing of the employees performing the cooking duties (AF 80).

In rebuttal, dated February 14, 1997, the employer argued that Applicants Blie, Lara, and Zavala were rejected because they did not possess the required two years of experience. The employer also contended the evidence demonstrated the position is full-time and permanent. The employer explained that the residential facility is licensed to provide care for 14 individuals and employ four workers. The facility argued that the cook must prepare three meals a day for all the residents and staff. Moreover, the cook must take into consideration the special dietary needs of

[1] All further references to documents contained in the Appeal File will be noted as "AF."

each resident. The employer argued that preparing three meals a day for 18 persons, in addition to all the other duties that are involved in managing a commercial kitchen, constitutes full-time employment (AF 16).

The CO issued the Final Determination on March 11, 1997 denying certification. The CO found all three applicants were unlawfully rejected. The CO pointed out that the employer failed to interview Applicant Blie even though he possesses more than six years of experience as a restaurant cook. Furthermore, the CO found the employer's documentation relating to the interviews of Applicants Lara and Zavala unconvincing. The CO also determined that the employer failed to submit persuasive evidence demonstrating the full-time nature of the position. Specifically, the CO noted that there are two persons listed as temporary cooks, but there is no cook specified as a full-time employee (AF 3).

On April 11, 1997, the employer requested administrative review of Denial of Labor Certification (AF 1).

## Discussion

The issue presented by this appeal is whether the employer provided lawful, job-related reasons for rejecting three U.S. applicants under §656.21 (b) (6); and whether the employer demonstrated the position was full-time under §656.3 of the regulations.

With regard to the first issue, an employer must show that U.S. applicants are rejected solely for lawful, job-related reasons. §656.21 (b) (6). Furthermore, the job opportunity must have been open to any qualified U.S. worker. §656.20 (c) (8). Therefore, an employer must take steps to ensure that it has obtained lawful, job-related reasons for rejecting U.S. applicants, and not stop short of fully investigating an applicant's qualifications. The burden of proof for obtaining labor certification lies with the employer. §656.2 (b).

The Board has repeatedly held that an applicant is to be considered qualified for a job if he or she meets the minimum requirements specified for that job in the labor certification application. *United Parcel Service*, 90-INA-90 (Mar. 28, 1991); *Microbilt Corp*., 87-INA-635 (Jan. 12, 1988). Moreover, the Board has held that an employer unlawfully rejects a U.S. worker who satisfies the minimum requirements specified on the ETA 750A and in the advertisement for the position. *Sterik Co.*, 93-INA-252 (Apr. 19, 1994); *American Cafe*, 90-INA-26 (Jan. 24, 1991); *Cal-Tex Management Services*, 88-INA-492 (Sept. 19, 1990); *Richco Management*, 88-INA-509 (Nov. 21, 1989); *Dharma Friendship Foundation*, 88-INA-29 (Apr. 7, 1988).

In the Final Determination, the CO found that the employer unlawfully rejected three U.S. applicants. The CO noted that the employer did not interview Applicant Shakim Blie even though his resume indicates he has worked as a restaurant cook for more than six years. In rejecting Mr. Blie, the employer argued that he was not qualified because restaurants, unlike residential homes, do not prepare meals according to customers' special dietary needs. We believe this explanation

is inadequate. The Board has held that where an applicant's resume shows a broad range of experience, education, and training that raises a reasonable possibility that the applicant is qualified, although the resume does not expressly state that he or she meets all the job requirements, an employer bears the burden of further investigating the applicant's credentials. *See Hambrecht Terrel International*, 90-INA-358 (Dec. 11, 1991); *Nationwide Baby Shops, Inc.*, 90-INA-286 (Oct. 31, 1991); *I & N Consulting Engineers*, 90-INA-239 (July 31, 1991); *The First Boston Corp*., 90-INA-59 (June 28, 1991). In his previous two positions, Mr. Blie worked as a head chef performing duties such as menu planning, inventory control, management and organization of the kitchen, and food preparation (AF 143). We believe Mr. Blie's experience at least warrants the employer's further investigation of his credentials. Because the employer failed to investigate fully his qualifications, labor certification properly was denied and further examination of the record is unnecessary.

## ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

For the Panel:

JOHN C. HOLMES
Administrative Law Judge

**NOTICE FOR PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary of Labor unless, within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except: **(1)** when full Board consideration is necessary to secure or maintain uniformity of its decision; and**, (2)** when the proceeding involves a question of exceptional importance. Petitions for such review must be filed with:

***Chief Docket Clerk***
***Office of Administrative Law Judges***
***Board of Alien Labor Certification Appeals***
***800 K Street, N.W., Suite 400***
***Washington, D.C. 20001-8002***

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five

double-spaced type-written pages. Responses, if any, shall be filed within 10 days of service of the petition, and shall not exceed five double-spaced type-written pages. Upon the granting of a petition, the Board may order briefs.